



Dr. Kryzer is ordering is with respect to having a cochlear implant in the left ear. The reason for that, since there is no hearing in the left and some hearing in the right, the idea is to preserve what little hearing he has and do the implant in the left ear. Then it will take him up to a year to train again to hear out of the left side.

I think where the issue arises is because the treatment is actually to his left ear. The implant would be to his left ear. We decided the best way to proceed was by post-award hearing. It is necessitated by the right, the loss in the right, but involves the left.<sup>1</sup>

In the March 31, 2009, Post Award Medical order, Judge Barnes granted claimant's request for additional treatment and also awarded claimant the sum of \$2,000 in attorney fees.

Respondent contends Judge Barnes erred. Respondent maintains that the potential left ear cochlear implant is unrelated to claimant's July 1999 accident.

The only issue before the Board on this appeal is whether the potential left ear cochlear implant is related to claimant's July 1999 accident.

#### **FINDINGS OF FACT AND CONCLUSIONS OF LAW**

After reviewing the record, the Board finds and concludes:

On July 19, 1999, claimant was working on respondent's dock helping to unload merchandise from a trailer. A ramp, which had gotten stuck on merchandise, slammed against the dock nearby claimant. Claimant described the sound created by the ramp as a cannon discharging. As a result of the incident claimant was taken to a local hospital's emergency room as he was unable to hear clearly, was dizzy, had ringing in both ears, and had pain in his right ear.

Dr. Thomas C. Kryzer, Jr., who is board-certified in otolaryngology, began treating claimant's right ear shortly after the 1999 incident. Although claimant settled this claim in 2006, he reserved his right to seek additional treatment. The hearing loss in claimant's right ear has progressively worsened and he is now a candidate for a cochlear implant. Consequently, claimant initiated this post-award request for additional treatment to pursue that implant.

Claimant testified that since his settlement he has not engaged in any activities where he has been subjected to loud noises. He also testified that he has been quite

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<sup>1</sup> P.A.H. Trans. at 4, 5.

Careful in protecting his hearing. At his May 2006 regular hearing, claimant testified that in October 2004 he had left his employment with respondent as operations manager due to his hearing problems. He then initially worked part time for a Western wear store before commencing work for Sportsman's Warehouse in its footwear department. As of October 2008, when he testified at the post-award hearing, claimant was the manager of Sportsman's Warehouse.

In May 2006 claimant testified he had experienced progressive hearing loss in his right ear since his July 1999 accident and that he also had problems with balance. And at the October 2008 post-award hearing, he testified he had sustained significant hearing loss in his right ear over the previous two months. Because of that recent hearing loss, claimant returned to Dr. Kryzer's office where he underwent additional hearing tests. Claimant was advised he was now legally deaf and, therefore, qualified for a possible cochlear implant in his left ear. Claimant testified that before his 1999 accident he had limited hearing in his *left* ear but his *right* ear was not impaired.

Claimant maintains the progressive hearing loss in his right ear is due to the July 1999 incident at work.<sup>2</sup> He testified his mother became very hard of hearing when she reached about 75 years of age but there were no other family members with hearing problems. Claimant also indicated he became aware of the hearing loss in his left ear in approximately 1975. Furthermore, he testified he did not know what caused the hearing loss in his left ear, although he had been in a car wreck in which he struck his left ear on the window.<sup>3</sup>

Dr. Kryzer testified in this proceeding and provided his opinion regarding the proposed cochlear implant and the cause of the progressive hearing loss in claimant's right ear. In addition to being board-certified in otolaryngology, the doctor has a subspecialty in otology, diseases of the ear. The doctor, who has treated claimant and who regularly performs cochlear implants, explained why the proposed implant would be placed in claimant's left ear rather than his right ear, as follows:

Yeah. The -- he still has residual -- some residual hearing in his right ear, and if we can we like to preserve that, because even though it's not currently enough to really help him on a day-to-day basis, with the implant in his other ear, that -- the minimal input from a hearing aid in his right ear would give him timing cues to help his speech. The left ear would be implanted because there's really nothing to lose over there and there's cross -- there's cross innervation from one side to the next to -- information from the right side goes to the left side of the brain

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<sup>2</sup> R.H. Trans. at 35, 36.

<sup>3</sup> *Id.* at 38, 39.

and information from the left side goes to the right side of the brain, so by stimulating his poorer hearing ear, even though his right ear is what we've been treating all these years, actually is the best treatment for the person.

. . . .

And we think that even though the left ear hasn't heard for a long, long time, in our experience they still do well because of the cross innervation from one side to the other side of the brain. About 50 percent of the fibers are crossed.<sup>4</sup>

Consequently, Dr. Kryzer felt claimant's recommended cochlear implant was "necessitated by the loss of hearing in his right ear,"<sup>5</sup> which was initiated by the July 1999 accident at work.

Dr. Kryzer did not have an opinion about what caused the hearing loss in claimant's left ear.<sup>6</sup> The doctor only knew that claimant's left ear was a "dead ear" when he first began seeing him in 1999. According to the records in the doctor's chart, claimant had total hearing loss in his left ear as early as 1991. Although the history was not entirely clear to the doctor, his notes indicated claimant had at one time attributed the left ear hearing loss to metal on metal noise trauma from being in, or close to, a rock and roll band. Claimant was never asked, however, at either the regular hearing or the post-award hearing about that history.

Moreover, the records from 1991 indicated claimant's right ear had a very mild low frequency loss, a very mild high frequency loss, but hearing was normal in the mid-frequencies. The doctor explained that chronic noise exposure or trauma generally affects the higher frequencies but the lower frequencies are affected by a more progressive disease or inner ear condition.<sup>7</sup>

Dr. Kryzer testified there was a big decrease in claimant's ability to hear mid to high frequencies with his right ear as indicated by the 1991 and 1999 hearing tests. And since 1999, the doctor felt claimant's hearing in the right ear has continued to deteriorate. But the doctor is not certain of the cause and testified, in part:

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<sup>4</sup> Kryzer Depo. at 9, 10.

<sup>5</sup> *Id.* at 10.

<sup>6</sup> *Id.* at 15.

<sup>7</sup> *Id.* at 17.

If I knew [why], I could fix it. I've assumed that the trauma -- the noise trauma triggered -- either caused an internal membrane break or there's mixing of fluid between two compartments of the inner ear, and those fluids are electrolytically different and that triggered just an unhealthy situation in his ear and he's just lost it, or it actually triggered an immunologic response and he's just progressively lost his hearing. And despite what I've done -- we've made little gains and then he falls back a little bit so --<sup>8</sup>

According to Dr. Kryzer, there is no way to determine definitively if a membrane is torn.

Although Dr. Kryzer acknowledges it is possible claimant's progressive hearing loss and, thus, the present need for the cochlear implant were related to his condition in 1991, the doctor believes it is more likely due to the traumatic injury claimant sustained in the 1999 incident at work. The doctor explained:

Q. (Mr. Collignon) Do you have an opinion whether [claimant] needs the cochlear implant because he had the accident in '99 or is it because of starting to lose his hearing in '91?

A. (Dr. Kryzer) You know, I mean, could either one be possible? Yes. With the history -- I put more of a possibility on the traumatic event because of the history. I mean have I seen patients on both sides of the aisle? Absolutely. But I don't always get this history either so I think the history is important in him. He'd been doing fine for -- you know, twenty years before I saw him to '99 when I saw him he'd been doing okay, so it wasn't until there was another traumatic event so that's why I put that to that.<sup>9</sup>

If claimant foregoes the cochlear implant, Dr. Kryzer believes claimant's hearing will continue to worsen and he will have additional problems communicating and holding a job.

Respondent hired Dr. Robert F. Thompson of Overland Park, Kansas, to evaluate claimant. The doctor, who is board-certified in otolaryngology, head and neck surgery, examined claimant in November 2008 and confirmed that claimant was totally deaf in his left ear and his right ear was virtually deaf in the higher frequencies and severely impaired in the lower frequencies. Due to these hearing losses, Dr. Thompson also believes claimant is a candidate for a cochlear implant assessment. Unlike Dr. Kryzer, Dr. Thompson does not perform the implants and, therefore, he was not comfortable with commenting upon which ear should be implanted.

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<sup>8</sup> *Id.* at 22, 23.

<sup>9</sup> *Id.* at 26, 27.

Like Dr. Kryzer, Dr. Thompson also was not certain why claimant progressively lost hearing in his right ear following the July 1999 accident. But because that loss was progressive, Dr. Thompson did not believe claimant's 1999 accident at work and the resulting acoustic trauma was the cause.<sup>10</sup> The doctor testified, in part:

The [right ear] hearing loss occurred apparently, based on the audiometric testing, after the event in July of 1999, and was a progressive hearing loss based on multiple audiometric evaluations that are included in the information [Mr. Ratzlaff] sent. And it's that progression of hearing loss that would make me find it difficult to state that the event was the cause of the hearing loss. So if I'm asked what is the cause of the hearing loss, my answer is I don't know. We would call it idiopathic. I could speculate on things like enlarged vestibular aqueduct or perilymphatic fistula, different potential causes, but it's not unusual for us to see people who have unexplained progressive hearing loss in their lifetime. And this prior hearing loss may imply that he is an individual that had a risk of this occurring to the right ear. So I guess to answer your question what is the cause of his hearing loss, I don't know, but if I was asked do I think it was caused by the event, I don't think so.

. . . .

[I]n an individual who has acoustic trauma, which means blast-related injury to the ear, the hearing impairment should occur immediately with the event, and I find it difficult to explain how his hearing would have gradually deteriorated after the exposure.<sup>11</sup>

The Board finds the order for post-award medical benefits should be affirmed. Dr. Kryzer has a subspecialty in diseases of the ear. Also, he has much more expertise performing cochlear ear implants and he recently authored a chapter on that topic. Consequently, the Board is persuaded that it is more likely than not that claimant experienced something more than mere acoustic trauma at work on July 19, 1999. The record indicates claimant was dizzy after the incident at work and that he also had balance problems. Accordingly, the severity of claimant's symptoms indicates it is likely that claimant sustained an inner membrane break or a mixing of fluids in the inner ear compartments as a result of the July 1999 accident, which would account for claimant's progressive loss of hearing since that time.

In summary, the record establishes that the cochlear implant is necessary to cure or relieve the effects of the July 19, 1999, accident and, therefore, is directly related to

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<sup>10</sup> Thompson Depo. at 10.

<sup>11</sup> *Id.* at 9, 10.

claimant's July 19, 1999, accident. Therefore, claimant should receive additional treatment, including the left ear cochlear implant, should further assessment or testing justify the procedure.

As required by the Workers Compensation Act, all five members of the Board have considered the evidence and issues presented in this appeal.<sup>12</sup> Accordingly, the findings and conclusions set forth above reflect the majority's decision and the signatures below attest that this decision is that of the majority.

**WHEREFORE**, the Board affirms the March 31, 2009, Post Award Medical order entered by Judge Nelsonna Potts Barnes.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of June, 2009.

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BOARD MEMBER

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BOARD MEMBER

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BOARD MEMBER

c: Brian R. Collignon, Attorney for Claimant  
Kurt W. Ratzlaff, Attorney for Respondent and its Insurance Carrier  
Nelsonna Potts Barnes, Administrative Law Judge

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<sup>12</sup> K.S.A. 2008 Supp. 44-555c(k).